

Remarks/Arguments

Reconsideration of the above-identified application in view of the present amendment is respectfully requested. By the present amendment claim 11 has been amended.

Preliminary Matters

The response of October 31, 2007 added new claim 30. Since the Examiner has neither addressed nor rejected claim 30, the Applicant assumes that claim 30 is allowable.

Claim Rejections under 35 U.S.C. §102(b)

Claims 11, 14-18 and 20-22 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 1,789,060 to Weisenbach (hereafter "Weisenbach"). It is respectfully submitted that as amended claim 11 patentably defines over Weisenbach and is therefore allowable.

Amended claim 11 recites a polyethylene chassis and one or more fixation elements in the form of screws and/or pins. Each fixation element is received in the chassis in such a way that it is locked by friction regarding movement. The frictional locking of the fixation elements is given by means of the polyethylene chassis having an elasticity giving a locking effect by means of friction on the fixation elements.

It is respectfully submitted that the amendment to claim 11 does not present a new issue. In particular, previously presented claim 13 recites that the chassis is made of UHMWPE.

Weisenbach does not disclose or teach a system as set forth in claim 11. Weisenbach teaches that clamp members 12, 15 are anchored with respect to a

bone via anchor screws 8 screwed into holes 7 (lines 59-64 and Fig. 1). Slots 13 and 16 of the clamp members 12, 15 are adapted to slide over anchor screws 8 and the clamp members 12, 15 are rigidly secured over the screws 8 by means of and between nuts 26 which thread on anchor screws 8 (lines 88-94 and Fig. 1). That is, the screws 8 are fixed relative to the clamp members 12, 15 by the nuts 26 providing a clamping force to the top and bottom of each clamp member 12, 15 while being threaded to each screw 8. The screws 8 and nuts 26 are not locked relative to the clamp members 12, 15 due to the elasticity of the clamp members 12, 15 imparting friction on the screws 8 or nuts 26. In fact, there appears to be no actual contact between the screws 8 and the clamping members 12, 15. Thus there can be no friction imparted by clamp members 12, 15 to the screws 8. Even if the screws 8 contacted the slots 13, 16, without the nuts 26 present, the clamp members 12, 15 would simply slide down the screws 8. Thus, the elasticity of the clamp members 12, 15 does not give a locking effect to the screws 8.

Furthermore, Weisenbach does not disclose or teach a polyethylene chassis. Since the nuts 26 in Weisenbach cooperate with the clamp members 12, 15 to secure the anchor screws 8 to the clamp members, there is no need to provide a material for the clamp members such that the clamp members frictionally engage the fixation screws 8, as recited in amended claim 11. Accordingly, one of ordinary skill would not form the clamp members 12, 15 from polyethylene. For the reasons set forth above, Weisenbach does not teach the subject matter of amended claim 11. Thus, it is respectfully submitted that claim 11 patentably defines over Weisenbach and is therefore allowable.

Claims 14-18 and 20-22 depend from claim 11 and are allowable for the same reasons as claim 11 and for the specific limitations recited therein.

Claim Rejections under 35 U.S.C. §103(a)

Claims 13, 19 and 23-29 were rejected under 35 U.S.C. §103(a) as being unpatentable over Weisenbach. Claims 13 and 19 depend on claim 11 and are allowable for at least the same reasons as claim 11 and for the specific limitations recited therein.

Claim 23 recites that a one-piece fixation element is connected to the chassis only by frictional engagement with the chassis to prevent movement of the fixation element relative to the chassis. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). 35 U.S.C. § 103 forbids issuance of a patent when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." In making a determination of obviousness under 35 U.S.C. §103(a):

...the scope and contents of the prior art are determined; the differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. Graham v. John

Deere, 383 U.S. 1, 17-18, 86 S. Ct. 684, 15 L. Ed. 2d 545 (1966).

Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, *there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.* KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727; 2007 U.S. Lexis 4745, 36-37; 75 U.S.L.W. 4289; 82 U.S.P.Q.2d 1385 (2007) (emphasis added). Also, the U.S. Supreme Court in KSR Int'l Co. V. Teleflex, Inc. noted that the analysis supporting a rejection under 35 U.S.C. 103(a) should be made explicit, and that it was "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements in the manner claimed." KSR, slip Op. at 14, 15.

The Examiner's reason is not articulated and lacks a rational underpinning to support the position of modifying Weisenbach to produce a one-piece fixation element that frictionally engages a chassis. Weisenbach teaches that clamp members 12, 15 are anchored with respect to a bone via anchor screws 8 screwed into holes 7 (lines 59-64 and Fig. 1). Slots 13 and 16 of the clamp members 12, 15 are adapted to slide over anchor screws 8 and the clamp members 12, 15 are rigidly secured over the screws 8 by means of and between nuts 26 which thread on anchor screws 8 (lines 88-94 and Fig. 1).

Once the screws 8 are fixed within the bone 4, 5, the slots 13, 16 allow the clamp members 12, 15 to be vertically and horizontally located before tightening the nuts 26 to secure the clamp members 12, 15 to the screws 8. Thus, the practitioner can set the screws 8 at desired locations and then use the wide tolerance provided by the slots 13, 16 to position the clamp members 12, 15 along the screws 8.


It would not have been obvious to one having ordinary skill in the art to modify the device of Weisenbach such that a one-piece fixation element was used because such a modification would render the device inoperable. In particular, if the screws 8 and the nuts 26 were manufactured as a one-piece unit, it would be impossible to fasten the screws 8 relative to either of the clamp members 12, 15. The device of Weisenbach relies on the releasable connection between the screws 8 and the nuts 26 to secure the clamp members 12, 15 to the screws and properly position the clamp members relative to the screws. By manufacturing the screws 8 and nuts 26 as a single unit, the clamp members 12, 15 could not be slid over the screws 8, nor could the nuts 26 be tightened to provide the clamping force necessary to secure the clamp members 12, 15 relative to the screws 8. Accordingly, it would not be obvious to one skilled in the art to modify Weisenbach to teach the subject matter of claim 23. Thus, is respectfully submitted that claim 23 patentably defines over Weisenbach and is therefore allowable.

Claims 24-29 depend from claim 23 and are allowable for at least the same reasons as claim 23 and for the specific limitations recited therein.

In view of the foregoing, it is respectfully requested that the amendment be entered and the application allowed. It is believed that the amendment introduces no new issues and requires no additional searching by the Examiner.

Please charge any deficiency or credit any overpayment in the fees for this amendment to our Deposit Account No. 20-0090.

Respectfully submitted,


James L. Tarolli
Reg. No. 36,029

TAROLLI, SUNDHEIM, COVELL,
& TUMMINO L.L.P.
1300 East Ninth Street, Suite 1700
Cleveland, Ohio 44114-1400
Phone: (216) 621-2234
Fax: (216) 621-4072
Customer No.: 26,294